

No. 34 OF 1930

[3RD SEPTEMBER, 1930.]

Date of assent.

An Ordinance to Give Effect to a Certain Convention on the Execution of Arbitral Awards and to Amend the Arbitration Ordinance.

3rd September, 1930.

Date of commencement.

WHEREAS a Convention, set out in the Schedule to this Ordinance, on the Execution of Arbitral Awards was on the 26th day of September nineteen hundred and twenty-seven signed at Geneva on behalf of His Majesty :

AND WHEREAS it is expedient that such provisions should be enacted as will enable the said Convention to become operative in the Colony :

NOW, THEREFORE, BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

1. This Ordinance may be cited as “ the Arbitration (Foreign Awards) Ordinance, 1930.”

Application.

2. The provisions of this Ordinance apply to any award made after the twenty-eighth day of July, nineteen hundred and twenty-four—

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- (a) in pursuance of an agreement to which the protocol set out in the Third Schedule to the Arbitration Ordinance applies ; and
- (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Governor, being satisfied that reciprocal provisions have been made, may by proclamation declare to be parties to the said Convention, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid ; and
- (c) in one of such territories as the Governor, being satisfied that reciprocal provisions have been made, may

by proclamation declare to be territories to which the said Convention applies,

and an award to which the provisions of this Ordinance apply is in this Ordinance referred to as a "foreign award."

3. (1) A foreign award shall, subject to the provisions of this Ordinance, be enforceable either by action or under the provisions of section 13 of the Arbitration Ordinance.

Effect of
foreign award.

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(2) Any foreign award which would be enforceable under this Ordinance shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of these persons by way of defence, set off or otherwise in any legal proceedings, and any references in this Ordinance to enforcing a foreign award shall be construed as including references to relying on an award.

4. (1) In order that a foreign award may be enforceable under this Ordinance, it must have—

Conditions for
enforcement
of foreign
awards.

- (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
 - (b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;
 - (c) been made in conformity with the law governing the arbitration procedure;
 - (d) become final in the country in which it was made;
 - (e) been in respect of a matter which may lawfully be referred to arbitration under the law of the Colony,
- and the enforcement thereof must not be contrary to the public policy or the law of the Colony.

(2) Subject to the provisions of this sub-section, a foreign award shall not be enforceable under this Ordinance if the Supreme Court is satisfied that—

- (a) the award has been annulled in the country in which it was made; or
- (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity, or was not properly represented; or

- (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration :

Provided that, if the award does not deal with all the questions referred, the court may if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (a), (b) and (c) of sub-section (1) of this section, or the existence of the conditions specified in paragraphs (b) and (c) of sub-section (2) of this section, entitling him to contest the validity of the award the court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

Evidence.

5. (1) The party seeking to enforce a foreign award must produce—

- (a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it is made; and
 (b) evidence proving that the award has become final; and
 (c) such evidence as may be necessary to prove that the award is a final award, and that the conditions mentioned in paragraphs (a), (b) and (c) of sub-section (1) of the last foregoing section are satisfied.

(2) In any case where any document required to be produced under sub-section (1) of this section is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of the Colony.

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(3) Subject to the provisions of this section, rules of court may be made under section 83 of the Civil Procedure Ordinance with respect to the evidence which must be furnished by a party seeking to enforce an award under this Ordinance.

6. For the purposes of this Ordinance, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

Meaning of
"final
award."

7. Nothing in this Ordinance shall—

Saving.

- (a) prejudice any rights which any person would have had of enforcing in the Colony any award, or of availing himself in the Colony of any award if this Ordinance had not been enacted; or
- (b) apply to any award made on an arbitration agreement governed by the law of the Colony.

8. Section 22 of the Arbitration Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, is hereby amended by inserting after the word "proceed" in the last line but one of the section the words "or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred."

Amendment of
section 22 of
Cap. 18.
No. 7 of 1928.

SCHEDULE.

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS.

ARTICLE. 1.

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary—

- (a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

- (b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- (c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition*, *appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- (e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

ARTICLE 2.

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the court is satisfied—

- (a) that the award has been annulled in the country in which it was made;
- (b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

ARTICLE 3.

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (a) and (c), and Article 2 (b) and (c), entitling him to contest the validity of the award in a court of law, the court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

ARTICLE 4.

The party relying upon an award or claiming its enforcement must supply, in particular—

- (1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made ;
- (2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made ;
- (3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

ARTICLE 5.

The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

ARTICLE 6.

The present Convention applies only to arbitral awards made after the coming-into-force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

ARTICLE 7.

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

ARTICLE 8.

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

ARTICLE 9.

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it, and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present Convention.

ARTICLE 10.

The present Convention does not apply to the colonies, protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th,

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1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the colonies, protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

ARTICLE 11.

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.
